

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
10/18/2002

10/09/2002

CLERK OF THE COURT  
FORM D000A

HON. KAREN L. O'CONNOR

J. Billingsley  
Deputy

DR 1999-005829

FILED: \_\_\_\_\_

IN RE THE MARRIAGE OF  
MARC LEWIS

SANDRA B BURT

AND

ALLISON LEWIS

MICHAEL S REEVES

DOCKET-FAMILY COURT CCC

MINUTE ENTRY

On August 26, 2002 and October 8, 2002, an Evidentiary Hearing was held on Petitioner's Petition Re: Contempt filed April 13, 2001 and Supplement to Petitioner's Petition for Order to Show Cause filed December 21, 2001. At the conclusion of the hearing the Court took the matter under advisement. The Court has considered the evidence presented and arguments of counsel.

**ISSUE #1: Whether Respondent/Wife is in contempt of Court Order's pursuant to a Rule 80(d) agreement regarding the listing sale price of the marital residence.**

In September 1999, the parties entered into a binding agreement adopted by the Court, requiring Wife to list the marital residence for sale at \$675,000.00. It is not disputed that Wife listed the house for \$850,000.00 for the months of October, November and December 1999. However, Wife claims due to the real estate market at that time, the parties agreed that the house should be listed at the higher amount. Husband disputes that there was such an agreement. In January 2000, the

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sale price was lowered to the agreed upon amount and it eventually sold in March 2000 for \$579,000.00. Although Husband filed a Contempt Petition in October 1999, this issue was not raised. Husband did not raise this issue until April 13, 2001, over a year after the house was sold and the divorce decree finalized. Husband is requesting reimbursement for all monies he paid pursuant to the 80(d) agreement for maintaining the residence while the house was on the market. The Court has considered the combination of Wife's testimony of the oral agreement and Husband's delay in bringing this action and finds insufficient evidence for a contempt finding.

IT IS ORDERED denying Husband's request for contempt on this issue.

IT IS ORDERED denying the parties' request for attorney's fees on this issue.

**ISSUE #2: Whether either party is due money from the offsets awarded in the Dissolution Decree.**

THE COURT FINDS that Richard E. Cagan, CPA, was appointed by the Court, at Wife's request, to determine this issue; that he addressed all issues raised by Wife; that Wife presented no conclusive nor convincing evidence to show Mr. Cagan's calculation is in error; and that Mr. Cagan concluded that Wife owes Husband \$4,530.04. Therefore,

IT IS ORDERED Wife shall pay Husband \$4,530.04 that is due and owing to him no later than November 15, 2002.

IT IS ORDERED denying the parties' requests for attorney's fees on this issue.

**ISSUE #3: Whether Wife is in contempt of Court for not paying Husband his portion of impound check #1 until after he filed a contempt petition?**

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There is no argument that the parties were to equally divide the impound check in the amount of approximately \$1,600.00. Wife had the check in her possession and offers no good reason for the delay in distributing Husband's share. The Court finds that although Wife was unreasonable in her delay, the settlement agreement does not express a time frame in which monies were to be paid. Therefore, although Husband is entitled to attorneys fees,

IT IS ORDERED denying Husbands request for a finding of contempt.

IT IS ORDERED awarding Husband attorney's fees and costs in litigating this matter. Husband's counsel will lodge an affidavit for fees and costs within thirty days.

**ISSUE #4: Whether Wife is in contempt of Court for not disclosing impound check #2?**

For the same reason stated above in issue #3,

IT IS ORDERED denying Husband's request for a finding of contempt.

IT IS ORDERED Wife shall immediately disclose a copy of impound check #2 and pay Husband one half of the amount listed no later than November 15, 2002.

IT IS ORDERED awarding Husband his attorney's fees and costs in litigating this action.

**ISSUE #5: SPECIAL MASTER FEES**

IT IS ORDERED denying Husband's request for reimbursement of Richard Cagan's fees. Both parties shall equally bear the costs.

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IT IS ORDERED Wife shall immediately pay Mr. Cagan any  
outstanding balance due and owing to him.

FILED: Exhibit Worksheet; Trial Worksheet